

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS**

TYLER DIVISION

DATE: February 19, 2009

JUDGE
LEONARD DAVIS

REPORTER: Shea Sloan

LAW CLERKS: Andrea Houston

Fenner Investment, Ltd. Plaintiffs vs. Microsoft Corporation Defendants	CIVIL ACTION NO: 6:07-CV-8 PRETRIAL CONFERENCE AND MOTION HEARING
ATTORNEYS FOR PLAINTIFFS	ATTORNEY FOR DEFENDANT
Brett Govett (Fulbright) Karl Dial (Fulbright) Miriam Quinn (Fulbright) Kirby Drake (Fulbright) Otis Carroll (ICK Firm) Johnny Ward (Ward Firm) Peter Fenner (Client) Suzan Fenner (Client)	Ruffin Cordell (Fish & Richardson) Lauren Degnan (Fish & Richardson) Jennifer Ainsworth (Wilson Firm) <i>For Microsoft</i> Mike Jones (Potter Minton) Trey Yarbrough (Yarbrough) Jerry Riedinger (Perkins Coie) Michael Broaddus (Perkins) Tyler Peterson (Perkins) Mickey Gill (Nixon Vanderhye) Rich Medway (Client Representative) Rick Flamm (Client Representative) Patrick Clutter (Client Representative) <i>For Nintendo of America</i>

On this day, came the parties by their attorneys and the following proceedings were had:

OPEN: 9:15 am

ADJOURN: 12:30 pm

TIME:	MINUTES:
9:15 am	Mr. Carroll introduced their clients, Suzan and Pete Fenner. Mr. Carroll, Mr. Govett, Mr. Dial, Ms. Quinn, Ms. Drake and Mr. Ward announced ready.
	Ms. Ainsworth, Mr. Cordell, Ms. Degnan announced ready for Microsoft. Mr. Jones, Mr. Richard Flamm, Mr. Medway, Mr. Riedinger, Mr. Yarbrough, Mr. Broaddus, Mr. Peterson announced ready for Nintendo.

DAVID J. MALAND, CLERK

FILED: 2.19.2009

BY: Rosa L. Ferguson, Courtroom Deputy

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TIME:	MINUTES:
	Court addressed the parties regarding the pretrial. Court will begin with the Motion for Sanctions.
	Mr. Dial presented Plaintiff's Motion for Sanctions (Dkt #185) .
	Mr. Jones responded. Mr. Dial responded and went on to the email issue.
	Mr. Yarbrough responded. Mr. Dial responded. Mr. Yarbrough further responded. Mr. Dial further responded. Mr. Yarbrough responded as to the depositions of the witnesses in question. Mr. Dial .
	Court denies motion as to 30(b)(6) and 3 rd party suppliers, and witness time. Court grants as to one-sheet manual and denies as to the emails. Court inquired what relief plaintiff seeks. Mr. Dial requests a jury instruction to the jury and time be adjusted as far as trial time and money.
	Mr. Yarbrough addressed the court on the one-sheet manual.
	Mr. Jones responded as to the sanctions and the harm of extra expenses as to reverse engineering. Court will take sanction under advisement.
	Court will move on to Motion to Exclude testimony of Dr. Ugone.
	Mr. Dial presented Motion to Exclude the Opinions of Dr. Keith Ugone (Dkt #202) .
	Mr. Jones responded. Court denies as to the assignor estoppel and grants as to settlement negotiations.
	Court will move on to the Potts matter. (Motion to Exclude David Potts - Dkt #203)
	Mr. Riedinger addressed the Court on the Potts matter. Mr. Dial addressed the Court on the design. Mr. Riedinger responded. Court grants as to the "trivial design" . Mr. Riedinger addressed the Court on "not very complicated" and Court will allow.
	Court will move on to Plaintiff's Motion as to Dr. Bristow and Gerald Lipovski.
	Mr. Govett presented Motion to Exclude the Opinions of Dr. Stephen Bristow and Gerald Lipovski (Dkt #205) and their Motion for Summary Judgment (Dkt #206) .
	Mr. Broaddus responded. Mr. Govett responded as to the hand-drawn diagrams. Mr. Broaddus further responded. Mr. Govett responded. Mr. Broaddus further responded. Mr. Govett addressed the Court on Page 11 of Exhibit 8 of the original motion. Mr. Broaddus further responded.
	Court denies motion to exclude opinions and offers suggestion having him come up with own drawing. Court denies Motion to Exclude Opinions of Dr. Stephen Bristow and Gerald Lipovski (Dkt #205) and Fenner's Motion for Summary Judgment (Dkt #206.)
	Mr. Broaddus presented Motion for Summary Judgment (Failure to Mark) (Dkt #204) .
	Mr. Dial responded. Mr. Broaddus responded. Court denies Motion (Dkt #204).
	Court will move on to Nintendo's Motion for Summary Judgment. Mr. Cordell addressed the Court and they have a similar motion.

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TIME:	MINUTES:
	Mr. Riedinger presented Nintendo's Motion for Summary Judgment (Dkt #207) .
	Ms. Quinn responded. Mr. Riedinger responded. Ms. Quinn responded. Mr. Riedinger further responded. Ms. Quinn further responded.
	Mr. Cordell presented Microsoft's Motion for Summary Judgment (Dkt #208) .
	Ms. Quinn responded. Mr. Cordell addressed the court on the minimum components. Ms. Quinn further responded. Mr. Cordell further responded and further presented his motion on buffer circuits. Ms. Quinn further responded. Mr. Cordell further responded and further expounded on the pulses.
	Court carry Motion through trial. Mr. Riedinger addressed the Court on the interpretation of the claim terms.
	Court will be in recess for 10 minutes.
	Hearing resumed.
	Court will take up the Motions in Limine.
	Mr. Govett presented Fenner's Motion in Limine (Dkt #290) . Mr. Govett addressed Item A. Mr. Jones responded. Court stands by is prior ruling. Mr. Govett addressed the Court. Mr. Jones asked for clarification on the Court's ruling. Court clarified.
	Mr. Govett addressed Item D. Ms. Degnan responded. Mr. Govett further responded. Court grants D.
	Mr. Govett addressed Item E. Ms. Degnan responded. Mr. Riedinger responded. Mr. Govett further responded. Ms. Degnan further responded. Court will allow development of product only.
	Mr. Govett addressed Item F (Court has previously ruled) and H (agreed). Mr. Govett present Item I. Mr. Riedinger responded. Court denies I. Mr. Govett addressed the Court.
	Mr. Govett addressed the Court on Item J. Mr. Cordell responded. Court grants at this time. Court clarified rulings without approaching bench. Mr. Cordell further responded. Mr. Govett further responded. Court will grant for now.
	Mr. Govett addressed the Court on Item K. Mr. Cordell responded. Court will grant K.
	Mr Govett addressed the Court on M. Mr. Riedinger responded. Court denies M.
	Mr. Govett addressed the Court on P. Mr. Riedinger responded. Court grants P.
	Mr. Govett addressed the Court on R. Ms. Degnan responded. Court grants R.
	Mr. Govett addressed the Court on W & X. Ms. Degnan responded. Court denied as to preferred embodiment and granted as to the other parts.
	Mr. Govett addressed the Court on CC – and that has been addressed.
	Mr. Govett addressed the Court on EE. Ms. Degnan responded. Mr. Govett further responded. Court denies EE.

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TIME:	MINUTES:
	Mr. Govett addressed the Court on FF. Ms. Degnan responded. Court asked plaintiff to decide what claims they are going to the jury on by Friday before Jury Selection. Court grants to the extent of asserted claims.
	Mr. Govett addressed the Court on HH. Ms. Degnan responded. Court ruled that parties can comment on what's on the video.
	Mr. Govett addressed the Court on JJ. Ms. Degnan responded. Court grants JJ. Ms Degnan further addressed the Court on JJ.
	Mr. Govett addressed the Court on MM. Mr. Broaddus responded. Mr. Govett further responded. Mr. Broaddus further responded. Mr. Govett further responded. Court grants MM.
	Mr. Govett addressed the Court on NN. Ms. Degnan responded. Mr. Riedinger responded. Parties in agreement.
	Mr. Govett addressed the Court on OO. Not an issue.
	Ms. Degnan presented Microsoft's Motion in Limine (Dkt #293) . Ms. Degnan presented Item 1. Mr. Govett responded. Court denies, but Court will allow to inspect and test with him present. Mr. Govett responded. Court stood by its ruling.
	Ms. Degnan presented Item 2. Mr. Govett responded and tendered the Court a document (McAlexander's declaration). Ms. Degnan responded. Court denies Item 2.
	Ms. Degnan presented Item 3. Mr. Govett responded. Court denies 3.
	Ms. Degnan presented Item 5. Court denies 5.
	Ms. Degnan presented Item 9. Court denies 9.
	Ms. Degnan presented Item 13. Already ruled upon.
	Mr. Riedinger presented Nintendo's Motion in Limine (Dkt #295) . Mr. Riedinger presented Item 4. Court grants unless it gives an instruction.
	Mr. Riedinger presented Nintendo's Motion in Limine (Dkt #299) . Mr. Govett responded. Mr. Riedinger further responded. Court denies at this time, but can re-raise.
	Mr. Riedinger presented Nintendo's Motion in Limine (Dkt #297) . Mr. Govett responded. Court denies.
	Mr. Riedinger addressed the Court on McAlexander's Supplement that added additional opinions to his expert report. Mr. Govett responded. Mr. Riedinger responded. Court will allow to take a short deposition of McAlexander no more than 2 hours.
	Mr. Riedinger addressed the Court on Exhibits.
	Court instructs both sides to meet and confer as to exhibits. Court expects parties to work it out.
	Court informed the parties as to time: Court will allow 45 minutes for Voir Dire, 45 minutes for Opening Statements, 12 hours for direct and cross examination and 60 minutes for closing.

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TIME:	MINUTES:
	Mr. Carroll addressed the Court on the showing of the patent video. Court will show video to the entire panel.
	Mr. Riedinger addressed the Court on the time allotted to the defendants. Mr. Cordell responded. Mr. Riedinger further addressed the Court. Mr. Cordell asked for 10 hours. Mr. Riedinger asked for 24 hours. Court and parties discussed timing for defendants. Mr. Govett asked to be notified about experts. Court instructed defendant to notify plaintiff on the Friday before jury selection.
	Court will allow up to 15 hours per side for direct and cross.
	Court addressed the parties regarding mediation and acknowledged Mr. Knowles being present in the courtroom.
12:30 pm	There being nothing further, Court adjourned.